IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE ACTING CHIEF JUSTICE MR.K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 13TH APRIL 2007 / 23RD CHAITHRA 1929

WA.No. 442 of 2007(E)

AGAINST THE JUDGEMENT IN WPC.20262/2006
.....

APPELLANT: 7th RESPONDENT

K.P. MOHAMMAD ALI HAJI,
2A, GLANDED POINT, SI APARTMENTS,
BANK ROAD, KOZHIKODE.

BY ADV. SRI.MOHAN C.MENON

RESPONDENTS: WRIT PETITIONER & RESPONDENTS 1 TO 6 IN W.P.(C)
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1. S. RASITHA, SRAMBIKKAL HOUSE,
KARUVASSERY P.O., KOZHIKODE-673 010.

2. GOVERNMENT OF KERALA, REP. BY
THE SECRETARY, FOOD, CIVIL SUPPLIES AND
CONSUMER AFFAIRS DEPARTMENT, TRIVANDRUM.

3. A. DIVAKARAN, DEPUTY SECRETARY,
DEPARTMENT OF FOOD CIVIL SUPPLIES AND
CONSUMER AFFAIRS, THIRUVANANTHAPURAM.

4. THE COMMISSIONER OF CIVIL SUPPLIES,
THIRUVANANTHAPURAM.

5. THE DIRECTOR OF CIVIL SUPPLIES
THIRUVANANTHAPURAM.

6. THE DISTRICT COLLECTOR,
KOZHIKODE.

7. THE DISTRICT SUPPLY OFFICER,
KOZHIKODE.

R1 BY ADV. SRI V.N.ACHUTHA KURUP (SENIOR ADVOCATE)
(APPEARS IN COURT)
SRI SRI.M.RATNA SINGH (SR.)
SRI.T.G.RAJENDRAN
SRI.K.PRAVEEN KUMAR
R2 TO R7 BY SR.GOVT. PLEADER SMT K. MEERA

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD
ON 30/03/2007, ALONG WITH WA NO. 596 OF 2007
THE COURT ON 13/04/2007 DELIVERED THE
FOLLOWING:

K.S. RADHAKRISHNAN, Ag. C.J. & M.N. KRISHNAN, J.

Writ Appeal Nos. 442 and 596 of 2007

Dated: 13th April 2007

JUDGMENT

Radhakrishnan, Ag.C.J.

Learned single judge of this court vacated Ext. P10 order passed by the Government in exercise of its revisional powers conferred under clause 71 of the Kerala Rationing Order on the ground that the same was passed by an officer inferior to the officer who has passed the appellate order.

2. The question that is posed for consideration before us is whether the petitioner, an unemployed girl, is entitled to be appointed as authorised wholesale distributor of rationed articles in Kozhikode taluk area. District Collector held in favour of the petitioner and the same was taken in appeal before the Commissioner, appellate authority. Appeal was dismissed. Mohammed Ali filed a revision before the Government and the orders of the District Collector and the Civil Supplies Commissioner were reversed and the Government granted wholesale dealership to

7th respondent, Mohammed Haji. Aggrieved by the same, petitioner has approached this court by filing W.P.C. No 20262 of 2006. Learned single judge did not go to the merits of the case, but held that the Government have committed an error in entrusting the revision to a lower level officer compared to that of the Commissioner of Civil Supplies. Learned single judge noticed that the Commissioner of Civil Supplies is a senior level officer who had decided the appeal and the revision petition should have been disposed of either by the Chief Secretary or by the Minister concerned and not by an officer inferior to that of the Commissioner of Civil Supplies. Learned single judge opined as follows:

> "It is certainly improper if not illegal to have a subordinate authority to sit in appeal over the order of the head of the Department. The arrangement made by the minister is not a healthy practice. I therefore vacate the Ext.P10 order of the Deputy Secretary for the reason that he has no authority to vacate the order issued by the superior officer. .....
> The order issued in revision by the Deputy Secretary is in a statutory revision to Government, and decisions in Government are always based on the hierarchy of the officers in the Government. In another case this court called for a report from the Chief Secretary justifying similar anomalous situation which in this case is found to be attributable to the minister's order.
>
> In the circumstances, writ petition is disposed of by vacating Ext. P10 order of the Deputy Secretary with a direction to the Civil Supplies Department to place the revision file before

> the Chief Secretary for either referring the revision petition tobe decided by a Secretary to Government senior to the Civil Supplies Commissioner whose order is under challenge and if no such officer is available the Chief Secretary himself will decide the revision."

Learned single judge, in our view, has not properly appreciated the legal validity of the revisional order. Counsel for the appellants submitted that since similar matter is likely to arise in future and unless the legal position is made clear, the judgment impugned would stand in the way of the Government while exercising the revisional powers. W.A. No 596 of 2007 was however filed by the writ petitioner contending that the learned single judge was not justified in not examining the matter on merits. Senior Counsel Shri V.N.Achutha Kurup submitted that the Government was not justified in upsetting the order of the District Collector and the Commissioner.

3. Shri Mohan C. Menon, counsel appearing for the appellant in W.A. No 442 of 2007 explained the special features of the revisional order passed by the Government. Reference was made to the heading of the order and emblem of the Government of Kerala and the numbering as G.O. (Rt) 270/06. Further it was pointed out that at the terminal portion it is shown that it has been

issued by the order of the Governor. Counsel submitted that the State Government means the Governor and the executive power vested in him is exercised by him directly or indirectly by officers subordinate to him in accordance with the provisions of the Constitution. Referring to Article 166 of the Constitution, counsel submitted that the executive action of the Government of a State shall be expressed to be taken in the name of the Governor and the orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in the rules to be made by the Governor and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor. Counsel also submitted that; the rules of business of the Government of Kerala specifically says that the Minister is primarily responsible and that all orders made by or on behalf of the Government of Kerala shall be expressed to be made in the name of the Governor. Further it is submitted that every government order shall be signed by the Secretary or the Additional Secretary or the Joint Secretary or the Deputy Secretary or the Under Secretary or such other officer specifically empowered and

that it would be deemed to be proper authentication of the order. Learned counsel also submitted that the learned single judge failed to note the vital difference between the institutional decision and the individual decision. Counsel also referred to the Rules of Business of the Government of Kerala Part II in support of his contentions.

4. Smt K. Meera, learned Government Pleader placed before court the Kerala Government Secretariat Instructions. Reference was made to Instruction 94 which deals with the procedure and mode of disposal of appeals and revisions which lie to the Government. Government while disposing of the revision under clause 71 of the Kerala Rationing Order was discharging a quasi judicial function. Instruction 94 of the Kerala Government Secretariat Instructions, which is relevant for our purpose, is extracted below for easy reference.

> 94. The procedure and mode of disposal of appeals and revisions which lie to Government will be as follows:
>
> (i) Statutory appeals and revision petitions to Government will be disposed of by the Minister concerned, unless the Minister specifically delegates this power to the Special Secretary, Secretary, Additional Secretary/Joint Secretary or Deputy Secretary as the case may be.
>
> (ii) When a case is delegated to any of the Subordinate authority specified above for personal hearing of the parties

> involved, the power of final disposal of the matter will also vest in that authority. Accordingly, the authority which hears a case will itself pass final orders thereon.

Above mentioned provision would indicate that statutory appeals and revision petitions to the Government shall be disposed of by the Minister concerned unless the Minister specifically delegates the power to the Special Secretary, Secretary, Additional Secretary/Joint Secretary or Deputy Secretary as the case may be. Powers conferred on the Minister concerned can be delegated to the officers upto the level of Deputy Secretary. It is in accordance with the above mentioned procedure laid down in the Kerala Government Secretariat Instructions that the Minister has authorised the Deputy Secretary to decide the appeal.

5. We called for the original files and examined the manner in which the order was passed. We find it was the Deputy Secretary who had heard the affected parties and after passing the order but before issuing the same, the order was placed before the Minister and the Minister gave his approval. On approval by the Minister it becomes an order passed by the Government in accordance with the Rules of Business of the Government of Kerala, particularly in the

light of Instruction 94 quoted above. Every order passed by the Government whether it is signed by the Deputy Secretary,Secretary or Additional Secretary, it means as an order passed by the Government in accordance with the Rules of Business. Only in cases where the Minister has not given his approval the order becomes bad in the eye of law. Order passed in this case is not strictly an executive order falling within the scope of Article 166.

6. Article 166 of the Constitution says that all executive action of the Government of a State shall be expressed to be taken in the name of the Governor. But when a minister exercises quasi judicial power sitting as a revisional authority under the statute and passes an order as quasi judicial authority, it can never be termed as an executive order requiring authentication under Rule 12 of the Rules of business of the Government of Kerala. Apex court in State of Maharashtra v. Basantilal (2003) 10 S.C.C 620) examined the question whether quasi judicial order made under the provisions of the statute by the revisional authority who is also a minister requires authentication under Article 166. Apex court held that if the minister exercisimg revisional jurisdiction under the statute as a quasi judicial authority and passes an order it can never be termed

as an executive order requiring authentication under Article 166 of the Constitution. We may extract the relevant portion of the judgment of the apex court in Basantilal's case, supra as follows:

> "The question, therefore, for our consideration is whether a quasi-judicial order made under the provisions of a statute by a revisional authority who is also a Minister in the State Cabinet, requires authentication under Article 166.
>
> It is an admitted fact that the order made by the Minister concerned was on a revision petition filed against the order of the Commissioner of Excise who himself was entertaining a petition before him under the provisions of the Act sitting as a quasi-judicial authority. It is also an undisputed fact that executive authorities also, if so empowered under a statute, exercise quasi-judicial powers. Such powers when exercised by an authority under a statute, sitting as a quasi-judicial authority result in a quasi-judicial order which can never be termed as an executive order requiring authentication under Article 166 of the Constitution of India."

7. We find in the instant case order has been issued in the name of the Governor, though strictly speaking when minister exercises his quasi judicial power it requires no authentication under Article 166 of the Constitution. Nevertheless it never ceases to be an order passed by the minister in exercise of his quasi judicial power under the Kerala Rationing order. In our view, since the minister has affixed his signature to the order passed by the Deputy Secretary to whom he has delegated his power under Instruction 94

of the Kerala Government Secretariat Instructions it is an order passed by the Government, consequently it is an order validly issued. In such circumstances, we are of the view learned single judge has committed an error in holding that since order has been signed by the Deputy Secretary it will cease to be an order passed by the Government. In such circumstances, we set aside the judgment of the learned single judge and direct the registry to place the matter before the learned judge as per the roaster and the case will be disposed of on merits. Both the appeals are disposed of as above.

Sd/-
K.S. RADHAKRISHNAN
Ag. Chief Justice

Sd/-

M.N. KRISHNAN
Judge

13/04/2007

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